But a forest officer may so far himself act in the matter of recovering revenue that, under section 82 (Burma 78) if the forest produce is on the spot and money is found to be due on it[2], the forest officer may detain the produce till the money is paid; and if the money is already due, or otherwise is not paid when it becomes due, the forest officer may sell the produce, and the sums payable to Government on account of it are first to be paid out of the proceeds before any other lien (if any) is satisfied.

SECTION VI.—OFFENCES AGAINST THE AUTHORITY OF PUBLIC SERVANTS.

§ 1.—*Resistance to Summons, Arrest, &c.*

In order that the legal powers given to public servants may be exercised to any purpose, it is obviously necessary that a corresponding liability should be imposed on private persons in case they resist the execution of those legal powers. If forest officers, for example, can demand the aid of certain persons in putting out a forest fire, it must be made penal in those persons to neglect or refuse to give such aid. If a forest officer can arrest an offender, it is penal for the offender to resist a *primâ facie* lawful arrest.

I shall therefore, in concluding this chapter, notice the chief cases in which, as far as the Forest administration is concerned, the public officer's power is upheld by law in the way alluded to.

These cases are almost all of them included in one chapter (X) of the Indian Penal Code, headed "Of contempts of the lawful authority of public servants." Many of these ctions in this chapter refer to Courts of Justice and judicial proceedings, and these, of course, I entirely omit.

There are also a few provisions applicable to my subject which the Code gives in other parts, not in Chapter X.

Under sections 172-3 are punishable, cases where a *legal notice, summons,* or *order* is to be served, and the person *absconds* or

[2] Either as the price of it, or as a charge or fee or duty leviable in respect of it.

resists service. The latter section includes also the intentional *tearing down* of notices, &c., legally *posted*, as, *e.g.*, in cases where a summons which cannot be served personally, is attached to the door of the house where the person resides.

Under section 174 is punishable the intentional refusal to *attend* in obedience to a summons, order, &c., lawfully issued. Section 175 punishes a similar *refusal* to *produce documents*.

Sections 178-79 and 180-81, refer to refusal to take oath, or answer questions, or to sign depositions and statements, and to making false statements on oath.

Section 182 may sometimes come within the practice of a forest officer. Here the offence is that of a person giving *false information* to a public officer, so that the officer may *use his power* (of arrest, search, seizure, &c.) to the *injury* or *annoyance* of any person, with whom, but for the false information, the officer would never have thought of interfering.

§ 2.—*Resistance to Seizure or Arrest.*

Forest officers have in certain cases the power to seize property liable to confiscation or cattle in the act of trespassing. *Resistance to seizure* in such cases is punishable under section 183.

Resistance to lawful *arrest of the person* comes under section 224, and resistance offered to the arrest *of another person*, under section 225.

§ 3.—*Omission to give Aid or Information.*

More directly important to forest officers are sections 176-7, which punish the *intentional omission* to give *information* of a fire, a forest offence, &c., or the giving of *false information* by persons under legal obligation to give information, and of course *true* information, as far as they know.

Section 187 further makes it penal to refuse or neglect intentionally to give *assistance* in cases (which I have before explained), in which the public servant is empowered by law to require assistance.

§ 4.—*Obstruction in executing Public Duty.*

The general case of *obstruction* of a forest officer in the *execution of his duty* is punishable under section 186[3].

Section 189 punishes *threats of injury* to a public servant, with the object of inducing him to do, or forbear from doing, any official act; the threat is punishable whether it imports injury directly to the public servant, or indirectly to some one in whom the offender believes the public servant to be interested.

In another part of the Code will be found similar provisions applying to cases where the offender goes beyond *threats*, and actually uses force, or causes hurt, or grievous hurt, in the attempt to deter the public servant from his duty. (Sections 332, 333, and 353, Indian Penal Code.)

Section 184 punishes obstruction to a *lawful sale* conducted by a public servant as such: and section 185 refers to *illegal bids* at such auctions[4].

These are sections which I alluded to as not contained in Chapter X of the Penal Code, and there are a few others which may be mentioned.

Sections 170-1 punishes the personating of a public officer or wearing a garb or carrying a token similar to that used (as a matter of fact) by any class of public servants.

[3] Section 188 can also apply to forest cases. Disobedience of an order under section 25 of the Forest Act, regarding carrying fire, regarding removal of obstructions in streams, orders regarding disposition of rafts in transit, or of timber in a depôt, are instances of "orders lawfully promulgated:" but they are better dealt with under the Forest Act, as offences against the Act or rules, as the case may be.

[4] As "illegal" means, not only what is punishable, but what gives rise to a civil claim, a forest officer who is bound by his service rules not to trade in timber *might* come under this provision.

I may here mention that forest officers are sometimes much hampered in public sales by *combinations* among merchants. This, however annoying, is not criminal, nor does it come under the sections quoted. We have nothing analogous to the French law (Code Forest: Art. 22), which prohibits secret combinations, and "*manœuvres*" to spoil auctions—"*les troubler ou à obtenir les bois à plus bas prix*," &c. such acts involve penalties besides damages and the nullity of the "*adjudication*."

Ill-disposed persons might resort to this device, either to escape detection in commiting offences or to impose on the ignorant.

I should also not omit to mention that while severe penalties are threatened, as we have seen, against public servants who accept any illegal gratification or bribe, the persons who *offer* such bribes are no less punishable, as they become *abettors* of the offence of taking the bribe, even if the "taking" does not happen, *e.g.*, if the bribe is refused.

PART V.

THE CIVIL LAW AS FAR AS RELATED TO FOREST ADMINISTRATION.

CHAPTER XX.

THE LAW OF CONTRACT IN ITS RELATION TO FOREST BUSINESS.

§ 1.—*What is a Contract.*

It would be impossible, within the space that remains to me, to present the student with anything like a complete view however elementary, of the whole law of contract; especially as the whole of the law has not yet been reduced to the terms of legislative enactment for India. Act IX of 1872, "the Contract Act," only deals with the general principles of contract and with certain branches of contract law.

There are many legal rights and obligations which attach to persons as members of society, by reason of the relation in which they stand to one another, *by nature or in the social order.* Contract law, however, deals with a class of obligations which do not arise *except on the voluntary entering into* relations of two persons between themselves.

Any person may enter into relations with another by proposing to do, or abstain from doing, something, and the other, being desirous of the result proposed, accepts the proposal; the latter in most cases proposes to do, or not to do, something in return, which proposal the other party in his turn accepts.

Then, on these proposals taking shape and being accepted on both sides, a series of obligations and rights arise as between these two parties, which form the subject of the *law of contracts.*

§ 2.—*Branches of the law of Contract.*

As these relations may be almost infinitely various, so the branches of contract law are numerous, and they are separately treated of in text-books and often in Statutes and Acts, because, though

there are some principles which run through *all* agreements of any kind whatever, there are special rules which apply to each branch. So we find certain well-understood divisions, such as the law of *sales* of movable property; *conveyances, leases, mortgages,* and other transfers of immovable property; *bailments* (*i.e.*, when one person *pawns* or deposits some movable property with another, or undertakes a *mandate,* or to do something for another) *partnership agreements,* contracts of *indemnity* and *guarantee* (of which contracts of security for faithful service, for holding a person free from certain pecuniary or other losses in certain circumstances, warrants of soundness of horses, or that goods correspond to a sample, are familiar examples); contracts of agency (rules about the relations of principal and agent in any business).

There are also some subjects, still truly part of the law of contract, which have become in practice further separated, such as the law of "Master and Servant," of "Carriers" (people who agree with consigners of goods to carry their goods to other places), the law of "Landlord and Tenant" and the law relating to Negotiable Instruments (Bills of Exchange and Promissory Notes). All these are branches of Contract law, but it only requires a moment's reflection to see that they all of them exhibit certain peculiar features, and that, consequently, a special group of rules has been developed in each case[1], so that those groups of rules have come

[1] While most contracts refer to something to be done, after which there is an end of the matter, contracts between master and servant, landlord and tenant, create a continuing relationship, and so give rise to many special rules. So with public carriers of goods, the necessities of the peculiar business, the risks run by both parties, give rise to special rights and liabilities. Negotiable instruments are also connected with a number of special rules, the result of long-established mercantile usage, and the peculiar character of documents which pass from hand to hand and have several parties to them, the original drawer, the person on whom the bill is drawn, the acceptor, the subsequent holders, and so forth. The Indian Legislature has not yet codified all these subjects, or reduced them to the terms of one or more acts. But the student is aware that the law of Negotiable Instruments has been embodied in an Act (XXVI of 1881), and that there is a Carriers Act (No. III of 1865). The subject of "Master and Servant" is in India one of difficulty, and though bills or drafts of prepared laws have been published they have as yet found little acceptance.

in practice to be treated as almost separate or independent topics of law.

§ 3.—*The Indian Contract Act. Topics treated in the Manual.*

The Contract law of India (Act IX of 1872) is divided into eleven chapters: The first six deal with the general rules which are common to all contracts whatever; the last five deal with five special kinds of contract—(1) sale of goods; (2) guarantee and indemnity; (3) bailments; (4) agency; and (5) partnership.

In the present chapter I only propose to deal with the subject in a very fragmentary way. I shall confine my remarks, first (section 1) to a general view of the essential features of all contracts; next (section 2) to a notice of the powers of forest officers to enter into contracts on behalf of the State; next I shall add (section 3) some practical remarks regarding just those topics of contract law which are likely to come within the forest officer's practice. Such will be chiefly contracts to buy and sell, contracts for work, contracts of guarantee (security for fulfilment of agreements and for the fidelity and good conduct of clerks and subordinates). A few words will also be said about Agency and Partnership, as forest officers have often to deal with agents of traders or with firms.

Of sales of land and leases of houses or land I shall say nothing. It is true that such deeds may be required in connection with forest business, but the Contract Act does not expressly deal with them (except so far as to lay down those principles which apply to them in common with all contracts), and moreover the forms of deed required and the conditions of the engagements are special so that in all such cases the forest officer will hand the matter over to the legal advisers of Government. Forest officers, moreover, are not usually empowered to execute on behalf of Government, documents regarding land.

Lastly, a section (section 4) will be devoted to a few remarks on the specific performance of contracts.